IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
Criminal Misc. Application No. 961 of 2001
(Old No. 2431 of 1998)

1. Chandra Mohan Kohli
   S/o late Sri Jaichand Kohli,
   R/o 155, Race Course, Dehradun.
2. Smt. Vidyawati Kohli,
   W/o late Jai Chand Kohli,
   R/o 155, Race Course, Dehradun.

..... Applicants

Versus

1. The State
2. Rameshwar Dass Chadha,
   S/o late Hari Chand Chadha,
   R/o 61/52 Prakash Nagar,
   Govind Garh, P.S. Cantt.,
   District Dehradun.

..... Respondents

Mr. I.P. Kohli, Advocate for the applicants.
Mr. K.S. Verma, Advocate for respondent No.2.

Hon'ble Prafulla C. Pant, J.

Heard Mr. I.P. Kohli, learned counsel for the petitioners and Mr. K.S. Verma, learned counsel for respondent No.2.

2) By means of this petition, moved under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter for brevity Cr. P.C.), the petitioner has sought quashing of the proceedings of criminal case No. 414 of 1998; Rameshwar Dass Chadha Vs. Chandra Mohan Kohli and others, whereby the petitioners have been summoned in said case

for their trial relating to offence punishable under Section 420 of I.P.C.

3) This petition was originally filed before the Allahabad High Court in the year 1998, from where the same has been received by transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

4) Brief facts of the case are that the complainant (respondent No. 2) appears to have agreed to purchase some immovable property situated in Race Course, Dehradun from the petitioners. In pursuance thereof, a part of consideration was alleged to have been received by the petitioners but neither the agreement to sell nor any sale deed has been executed by them, in this regard. It is argued on behalf of the petitioners that the dispute is of civil nature and the trial court has erred in law by summoning the present petitioners for offence punishable under Section 420 of I.P.C. Had there been some agreement of sale executed between the parties, I would have accepted the argument advanced on behalf of the petitioners. But, in the present case, a part of consideration out of the agreed sum of Rs. 4,00,000/- is said to have been received in several installments by the petitioners and they didn't execute an agreement to sell the property in favour of the complainant.

5) Learned counsel for the petitioners contended that one of the transferor was minor, as such, the permission of the District Judge was necessary for executing the agreement of sale on their behalf. Assuming for a moment that the contention is true, there should have been no

hindrance in execution of agreement of sale on the part of the rest of the petitioners in respect of their share. And, in case of bonfide hindrance in execution of agreement of sale or sale deed, atleast the petitioners could have refunded the part consideration received by them. At this stage, this Court cannot and should not express the view whether actually the consideration, as alleged in the complaint, was passed over to the petitioners, or not? But for the purposes of examining the matter within the scope of Section 482 of Cr. P.C., this Court has to see if the allegations in the complaint read with the statement of the complainant under Section 200 of Cr.P.C. and that of the witnesses recorded under Section 202 of Cr.P.C., if accepted as true, the ingredients of offence punishable under Section 420 of I.P.C. are made out or not? If the same are made out, the impugned order summoning the accused, cannot be said to be erroneous in law. This Court, cannot examine the matter on the basis of half baked evidence. It is the mater for the trial court to examine whether, the offence is committed by the petitioners, or not? The scope under Section 482 of Code of Criminal Procedure, 1973 is a limited one.

6) Therefore, for the reasons, as discussed above, this petition under Section 482 of Cr. P.C. is dismissed with the observation that all the pleas as to the innocence raised by the petitioners before this Court, may be raised by the petitioners before the trial court. This Court feels it just and proper to further observe that the petitioners if arrested or surrender before the court concerned, and move application for bail, their bail application shall be heard by the court concerned without unreasonable delay. With

these observations, the petition under Section 482 of Cr. P.C. stands disposed of. The interim stay order dated 20.07.1998, is hereby vacated.

(Prafulla C. Pant, J.)

Dt. October 10, 2006.
H. Negi